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Citizens Union
(New York, N.Y.)

Preliminary brief for municipal home rule...

[New York]

[1915]

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Preliminary Brief for Municipal Home Rule

SUBMITTED TO THE

Constitutional Convention of 1915

BY THE

Citizens Union of the
City of New York

Sept. 7, 1923 AST

Preliminary Brief for Municipal Home Rule

Submitted to the

Constitutional Convention of 1915

by the

Citizens Union of the City of New York

EVERY political party represented in the convention is definitely pledged to the principle of Municipal Home Rule.

Nevertheless the introduction of a number of specific proposals for Municipal Home Rule seems to have confused the situation so that some members of your honorable body, because of conflicting opinions as to the *extent* to which the cities shall have home rule, have expressed views which apparently fall short of the party pledges.

Consideration appears even to be given to an amendment introduced by Delegate Ray B. Smith of Syracuse, empowering the legislature to grant to cities such measure of home rule as it sees fit, subject to the power of any succeeding legislature to curtail, or violate, or abolish the grant made by its predecessor. We know that delegates who give any serious consideration to such a proposal must do so in fear that an agreement carrying out the party pledges for home rule may not be reached.

To the cities of the state this question is of vital importance. Announcement that constitutional revision would not substantially increase the freedom of cities in dealing with their local affairs would occasion the sharpest disappointment.

From the urban viewpoint home rule is perhaps the most important issue with which the Constitutional Convention has to deal. Any temptation to leave the matter to determination by the state legislature should therefore be strenuously resisted.

It will require deliberation to sift various proposals, and to prepare a provision granting to the municipalities freedom in the management of their purely local affairs, while preserving to the legislature its control over matters of state concern.

But the drafters of our constitution have never shunned such tasks because they were difficult.

Our constitution contains many limitations upon the powers

of the legislature which have at times required the interpretation of the courts in the light of shifting conditions, but which at the same time have worked public benefit. It may be that the line cannot be so drawn between those matters of local concern to the cities and those of concern to the state as to leave no room for questions to arise in the courts, but this alone is not sufficient reason for not attempting to draw the line at all, or for leaving city government subject to the control of the state legislature through special legislation.

This memorandum is aimed to assist the delegates in their consideration of this question merely as a preliminary presentation. We shall hereafter submit specific details.

I.

THE EVILS TO BE REMEDIED BY HOME RULE

At the first hearing before the Committee the proponents of home rule were asked to submit to the Committee a list of the evils sought to be remedied. Though these evils are fairly well known, your Committee evidently recognizes the importance of stating them clearly, preliminary to consideration of the form of the remedy.

The evils may be classified under two headings, i. e., (1) those which affect the cities, and (2) those which affect the state legislature.

Evils Affecting the Cities

(*a*) *Lack of responsibility for city management.*

It is clearly the right of citizens to hold municipal officers to a strict accountability for the expenditure of the large sums of money involved in city administration and for the efficient management of the city.

The reply of municipal officers to attempts to fasten responsibility upon them is that they cannot be held to justify expenditures, or to demonstrate economy, when they are to a great degree simply passive tools of the legislature which decrees the mandatory expenditure of city money, and interferes, by mandatory requirements and inhibitions, in purely local administration.

Representative government is the only kind possible in this state. Efficient representative government requires that power shall be co-ordinated with responsibility. No officer can be held

responsible for the discharge of a duty which he has not the power to discharge.

Conversely every officer should have power to perform his allotted task to the end that he may be held strictly responsible to the electorate for the exercise of that power.

The present system, allowing legislative interference by special enactments with matters of purely local city administration and depriving city officials of adequate power to deal with the matters they are chosen to administer, divides responsibility and breaks down efficiency in city government.

(*b*) *Delay in executing city projects.*

A city very frequently finds itself hampered in completing municipal projects. Thus, it has been necessary within the past five years, for Buffalo to go to the Legislature for authority to protect its trees by spraying, Newburg for permission to close and sell a portion of a street, Little Falls for permission to pave streets without preliminary petition, Syracuse for authority to use other substances than water in sprinkling its streets, New York City for authority to dispose of old school books. This means delay. Delay often is but a synonym for inefficiency.

It may be said that such authority can be granted to the city by general legislation without constitutional changes. But, as will be more fully developed later, cities should not only have the power, but they should also be protected against legislative interference with, or withdrawal of, that power. A mere grant to the cities of such degree of home rule as each succeeding legislature is willing, during its ascendancy, to permit, gives no assurance that cities will be made any freer under future legislatures than they have been under past.

(*c*) *Inefficiency resulting from compromise.*

Every special city bill must, under the present constitution, be submitted to the mayor, or to the mayor and common council, of the city affected. Cases of enactment into law of special city bills not accepted by these local authorities are rare. Frequently, however, a bill may be accepted by the local authorities when its provisions are not entirely satisfactory. As the city can have no legislation that is not approved by the legislature, it is often necessary to compromise regarding the form of legislation. A similar situation is created when a committee of the state legislature, desiring to amend a local bill, prepares

the amendment without such intimate knowledge of local conditions as is possessed by the local authorities, and the bill reaches the city in a somewhat defective form. It must be accepted since the delay of waiting for another legislature would prove very costly to the municipality. This illustrates the kind of inefficiency which inevitably results from submitting matters of local administration to a body, such as the legislature, composed mostly of persons not familiar with or responsible to the locality affected.

(*d*) *Mandatory interference with local government.*

The evils above stated would be present under the existing provisions of the constitution, even if every legislature refrained from enacting mandatory bills in violation of home rule. Few legislative sessions close, however, without the enactment of some special mandatory laws directing particular action upon matters of purely local city government. This sort of legislation is generally recognized as highly objectionable.

(*e*) *Denial of relief requested in special city bills.*

Exercise by the local government of its proper functions is frequently interfered with by the defeat of measures requested by the city authorities. It has even happened that the failure to enact special city bills has resulted from mistake. A governor only a few years ago departed for a trip to Europe, having overlooked a very important local bill affecting the city of Newburgh, and the resulting delay held up a public improvement in that city for a year.

Evils Affecting the State Legislature

Not only should cities be freed from legislative interference with purely local affairs, but the legislature should be freed from the demoralizing effect of special legislation for different cities.

Examination of the session laws of any recent year discloses that much of the time of the legislature is devoted to consideration of purely local matters with which a majority of the members of the legislature cannot possibly be thoroughly acquainted.

Furthermore, the necessity of securing for his city the enactment of some very important local bill has frequently interfered with the independence of action of a legislator upon matters of state-wide importance. It forces him to resort to what is very

dangerously near to (if not actually amounting to) "log-rolling." The legislator, honestly striving to accomplish a result for his city, must bargain with other legislators who have neither interest in nor responsibility to the city. The legislator who may not be working zealously for his city escapes the penalty by pretending to support the desired measure, actually voting for it—and then having it beaten by the votes of other legislators who are not elected by or responsible to the consistuency affected.

Take, for example, the case of the commission charter adopted for the city of Buffalo in the year 1914. Buffalo by referendum vote in 1909 indicated that it wanted this commission charter. The members of the senate and assembly from the city of Buffalo voted for the commission charter bill in the year 1911, as did its representatives in the senate in 1912 and 1913, in which years the bill came to a vote in that house only. We do not say that any one of these legislators was insincere in casting his vote in favor of the commission charter. But whether the Buffalo representatives were sincere or not, the will of their constituents was thwarted by non-responsible representation. The result is legislative demoralization and scores of faithful legislators would welcome relief from this deplorable condition.

II.

WHAT HOME RULE DOES NOT INVOLVE

Having pointed out some of the evils demanding remedy, we will endeavor to define the nature of the proposed remedy. There will be some advantage in first pointing out some of the things that are NOT necessarily involved in a home rule constitutional provision. Some of the proposals submitted to the Convention have been criticised because of a fear that they would deprive the legislature of its power to legislate in matters of state concern, or to exercise a proper control over the property, government and affairs of cities.

We emphasize that this is not essential in the home rule programme.

It is not desired to erect cities into governments divorced from the state.

The private corporation furnishes a useful analogy. The state has long since given up the policy of granting special charters to private corporations, and the constitution at present provides that such corporations shall be formed under general laws. The legis-

lature cannot pass a special law amending the charter of a particular insurance corporation incorporated under general law. Nevertheless, the legislature has full control through the provisions of the general insurance law which it has enacted and has power to amend.

So, in the case of cities, there is nothing inconsistent between a prohibition against charter tinkering and the preservation of the legislature's control over the property, government and affairs of cities through the enactment of general legislation applicable alike to all similar communities. It is such a prohibition against charter tinkering which is the essence of municipal home rule.

III.

WHAT HOME RULE IS

Home rule means simply the freedom and power of cities to manage their own local affairs, free from legislative interference by special legislation.

Municipal home rule, like any other kind of freedom, has two aspects; one, positive, the other, negative. It involves on the one hand (a) *power* to do whatever is necessary in the management of local affairs without securing a special legislative consent; and, on the other hand, (b) *protection* from interference in local affairs by mandatory special legislation.

While these two phases of home rule are complements of each other, they are not necessarily interdependent. It would be possible, for example, to grant full powers to the municipalities to adopt or amend their own charters and local legislation, and yet reserve to the state a right to interfere at any point; and on the other hand it would be possible to prohibit special legislation without at the same time granting local legislative powers, the result being that the framework of government in all cities would have to be dictated by general laws and, therefore, follow a uniform plan; but either of these would not be a substantial grant of municipal home rule. The desired municipal legislation can be brought about only by securing to municipalities both the *power* and the *protection*.

A fundamental feature of home rule is the prohibition of special legislation. Some advocates go so far as to lay off a field of municipal jurisdiction which cannot be invaded by the legislature, even by general laws. Whether such a complete degree of municipal home rule is or is not desirable, the point cannot be made too emphatic that it is not an essential feature in the home rule programme.

The predominating evil in the present situation is special legislation, requiring cities and villages to go to Albany in regard to matters of purely local concern, and at the same time impose on the legislature, as has been shown, a choice of "log-rolling," ignorance or useless labor.

The extent of the power to be granted to municipalities and of the prohibition upon legislative action is a matter to be determined by closer analysis. The main point is not the exact location of the line, but that the line should be drawn somewhere. What fields should be free, and what restricted, are, indeed, important, but it is more important to understand that failure to agree to any specific proposal made by any particular set of home rule advocates does not in the least affect the necessity of arriving at an agreement on the details.

In a properly drawn amendment the following principles should be recognized:

(a) The legislature should provide for the enactment of city charters only by general law, just as it provides for the creation of private corporations by general law. Municipal corporations should have the power to prepare their charters (not by town meeting, of course, but by duly elected delegates) subject to the provisions of broad general powers to be expressed in statutes, which should bear the same relation to municipal corporations that our general corporation laws do to private corporations.

(b) The legislature should by the constitution be debarred from passing special laws involving such powers as the following: fixing or changing the salaries of local officers; creating offices, the salaries of which are to be paid from the city treasury; interfering with the actual administration of purely municipal departments. This does not mean that the legislature should be prohibited from passing general health laws, general police laws, or the like, to which a municipal officer's oath of office would bind him to conform. It does not mean that the legislature should be prohibited from legislating upon such a question of state concern as public education—even to the extent of compelling the city to provide an educational system at its own expense conforming to the standard set by the state authorities. But since these are all matters of state concern they are matters which should be dealt with only by general laws having uniform application. The details, such as the location of school sites, police stations and hospitals and the organization and personnel of the city departments, being matters that require treatment adapted to local needs

and local conditions in different cities, but in full conformity with the general policy of the state, are matters of local concern and should be within the control of the local city government, if it is to be held responsible for efficient city management.

CONCLUSION

This memorandum is not a final brief. It is general in its scope while the ultimate amendment must have the specific quality of constitutional drafting. But its aim and its excuse is to sound the keynote of a vital reform. Its appeal is that the convention will realize the existence of the crying evils that have been pointed out and the fundamental soundness of the demand for Municipal Home Rule. It urges no new panacea. Municipal Home Rule was guaranteed by *Magna Charta*, and has always been part of the fundamental law of this state. During the last century it has by gradual degrees been limited and cut down to an extent which has wrought untold ill to the cities of this state. The plea for its restoration should be earnestly and sympathetically weighed by every member of the Convention.

Citizens Union of the City of New York,

WM. JAY SCHIEFFELIN, *Chairman*
W. E. YOUKER, *Secretary.*

June 14, 1915.

Committee on Constitutional Convention

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FRANK B. WILLIAMS.

Table Showing Number and Disposition of Special City Bills—1910 to 1915—New York State Legislature

	1910	1911	1912	1913	1914	1915	Totals
Total No. of bills introduced	2004	2260	2230	2775	1945	2294	13508
Total No. of special city bills introduced	473	566	417	612	331	377	2776
No. of special city bills defeated in Legislature through opposition by cities affected or despite advocacy by such cities	229	269	203	321	142	189	1353
No. of special city bills passed	244	297	214	291	189	188	1423
No. of special city bills passed and accepted by cities	202	243	188	233	152	158	1176
No. of special city bills passed by Legislature but not accepted by cities	42	54	26	58	37	30	247
No. of special city bills accepted by cities but vetoed by Governor	19	28	29	98	16	11	201
No. of special city bills not accepted by cities but re-passed over city's veto	2	6	0	0	1	2	11
No. of special city bills passed over city veto finally defeated through veto by Governor	0	2	0	0	0	1	3
Total No. of special city bills that became law	185	219	159	135	137	148	983
Total No. of all bills that became law	705	903	553	838	532	729	4260

Of all bills that became law 23 per cent. were special city bills.

Of the total number of special city bills introduced only 35½ per cent. finally became law.

Of the special city bills passed 31½ per cent. were either not accepted by cities or vetoed by governor.

In one year (1913) of the bills accepted by cities 42 per cent. were vetoed by governor; in the six years 17 per cent.

NOTE: Special city bills are those which relate to a single city, or to less than all the cities of a class. However, under decisions many bills applicable only to a single city do not come within this classification.

THE CITIZENS UNION

A Union of Citizens, Without Regard to Party,
for the Purpose of Securing the Honest
and Efficient Government of the
City of New York.

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